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COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Notice of Inquiry }

Unbundling of Natural Gas Local } D.T.E. 98-32

Distribution Company Services }

Comments of AllEnergy Marketing Company, L.L.C., Dynegy Marketing and Trade, Enron Energy Services, Inc. and Statoil Energy, Inc. on the Petition for Adoption of Regulations

Introduction and Background

On November 3, 1999, the ten investor owned local distribution companies ("the LDCs") filed with the Department of Telecommunications and Energy ("the Department"), a Petition requesting that the Department adopt draft regulations developed as part of discussions at the Massachusetts Gas Unbundling Collaborative ("Collaborative" or "MGUC").

AllEnergy Marketing Company, L.L.C., Dynegy Marketing and Trade, Enron Energy Services, Inc. and Statoil Energy, Inc. (hereinafter "Marketers") appreciate the opportunity to file comments on the draft regulations.

Marketers have participated in Collaborative meetings and specifically in discussions about the draft regulations. While the draft filed by the LDCs is a good starting point for regulations necessary to advance restructuring of the natural gas industry in Massachusetts, in the Marketers' view, the draft regulations need to be refined so as not to create a situation where existing markets are harmed. As the LDCs state in their Petition, many Commercial and Industrial customers of natural gas already enjoy the benefits of competition. While the draft regulations in some cases have made accommodations to recognize existing markets, the draft does not go far enough in accommodating customers currently transporting, and the Marketers serving them.

Our second concern is that the draft regulations in some cases are not flexible enough to accommodate the changes in the industry which are anticipated in the very near future. For example, while the Collaborative has not thoroughly discussed the provision and pricing of Default Service, it is the expectation of Marketers that this service will eventually be offered competitively. Therefore, it is important that these regulations be crafted to allow for this eventuality.

Our specific comments on the regulations follow.

Specific Comments

Section **.03: Local Distribution Company Requirements

(4) Default Service

In order to align this section of the regulations with other provisions regarding Default Service, the availability language should not make reference to the Local Distribution Company's terms and conditions in a way that will limit the offering of Default Service exclusively to the LDC. Other parts of the draft leave open the possibility that some other entity will be the Default Service provider; this section should be changed accordingly. At a minimum, adding the phrase "if

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applicable" to the end of the section would address the issue.

(6) Billing and payment

For the same reasons discussed above, subsection (b) should be modified with the phrase, "to the extent such service is provided by a Local Distribution Company."

Section **.04: Supplier and Retail Agent Requirements.

The information filing requirements (section (b)) are onerous, particularly for Marketers who are actively currently transporting natural gas in Massachusetts. In an effort to recognize the duty of the Department to protect the public while at the same time not retro-regulate existing suppliers in the Market, we suggest the following changes to this section:

Remove the requirements that Applicants provide Articles of Incorporation and By-Laws. Sufficient information is contained in Annual Reports to glean the information of concern in Articles and By-Laws.

Of greater concern is the proposed annual update of the application. Not only does this impose costs on Marketers, but it is unnecessary. In other jurisdictions, regulatory bodies have simply put the onus on the Marketer to refile or reapply in the event of a material change in circumstances; that requirement is already contained in the draft regulations. We would urge the DTE to delete the annual filing requirement by amending the final paragraph of Section **.04(2)(b) as follows:

"Applicants are required to file an original application, with two copies and a copy on diskette. Within 30 days of any material or organic (G.L.c. 156B) change in the information required the Applicant shall file updated information with the Department. The Applicant also shall file an updated application annually. If there has been no material or organic change to the relevant information, an Applicant may submit an updated application indicating that there has been no change since the previous application. Any Applicant who knowingly submits misleading, incomplete, or inaccurate information may be penalized in accordance with statute and with the regulations promulgated by the Department."

Section **.04(4)(c)1. Letter of Authorization. Subsection c. is problematic in that there are large customers who use more than one supplier. For example, some large customers have both a firm meter and an interruptible meter and have different Suppliers for each meter. We think that the intent of the section is to be certain that residential customers understand that they should not sign up with more than one Supplier. Accordingly, we recommend changing the subsection to:

"c. That the a Residential Retail Customer or a Non-Residential Retail Customer with an annual load of less than or equal to 5000 therms, understands that no more than one Supplier may be designated to provide Supplier Service to a meter or group of meters at a specific location."

Section **.05(2) Terms of Service Requirements may be necessary for Residential customers, but its requirements should not be applicable to larger customers for two reasons: first, contracts with large customers are tailored to the specific customers and don't lend themselves to the mass marketing approach underlying this section. Second, much of the information contemplated in the subsection is not appropriate for a commercial contract, which is what governs the relationship between Marketers and large customers. For example, item (I) – Method whereby the Retail Customer will be notified of changes to items in the Terms of Service – is not applicable to a commercial contract because its terms cannot typically be changed unilaterally.

We also believe that a typographical error is contained in the second sentence of section (2) which refers to distribution of the terms in accordance with **.05(4). The reference should, we believe, be to **.05(3) titled "Distribution of Terms of Service."

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Finally, again because contracts with large customers are negotiated and tailored to their specific needs and circumstances, the requirement contained in **.05(3)(c) to make available information on any available supply offerings is inappropriate.

III. Conclusion

The Marketers appreciate the efforts of all parties to the Massachusetts Gas Unbundling Collaborative to produce these draft regulations. We continue to believe that the Collaborative is the most effective and efficient way to craft changes necessary so that all natural gas customers in Massachusetts enjoy the benefits of competition.

The draft regulations are a good starting point; if the Department makes the refinements requested in our comments, it will have achieved the proper balance of customer protection with the flexibility needed to create and continue workable, competitive markets.

Respectfully Submitted,

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